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12  
13  
14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 ROBERT ARMIJO,

17 Plaintiff,

18 v.

19 OZONE NETWORKS, INC. d/b/a OPENSEA,  
a New York Corporation, YUGA LABS LLC  
20 d/b/a BORED APE YACHT CLUB, a Delaware  
limited liability company; LOOKSRARE; and  
21 DOES 1 to 50,

22 Defendants.

23 Case No.: 3:22-cv-00112-MMD-CLB

24 DEFENDANT YUGA LABS' REPLY IN  
SUPPORT OF MOTION TO STAY  
DISCOVERY OR EXTEND DEADLINES  
UNDER FRCP 26(F) AND LR 26-1 AND  
TO VACATE CASE MANAGEMENT  
AND SCHEDULING ORDERS

25  
26  
27  
28 ORAL ARGUMENT REQUESTED

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1      **I. INTRODUCTION**

2      Courts in this District regularly grant motions to stay discovery pending dispositive  
3 motions, particularly those raising jurisdictional challenges. Yuga Labs' motion established that a  
4 stay is appropriate in this matter because a "preliminary peek" at the merits of Yuga Labs'  
5 pending motion to dismiss demonstrates that personal jurisdiction is lacking and that plaintiff will  
6 be unable to state a viable claim for relief. Plaintiff's opposition ("Opp.") does not cite a single  
7 case suggesting otherwise. The only purported bases for personal jurisdiction plaintiff raises are  
8 directly contradicted by case law. And plaintiff's arguments on the merits of his negligence and  
9 contract claims not only ignore his fundamental pleading obligations, but also are an admission  
10 that he needs additional facts in order to plausibly allege each element of his claims. Yuga Labs'  
11 motion to dismiss raises substantial, dispositive legal issues that are likely to be resolved in its  
12 favor and plaintiff does not identify any real prejudice that would result from a stay.

13      Because resolution of the motion to dismiss will likely be dispositive of all claims, a stay of  
14 discovery and any associated obligations, including any deadlines triggered by Federal Rule of  
15 Civil Procedure 26(f) and Local Rule 26-1, is not only warranted, but favored.

16      **II. PLAINTIFF'S OPPOSITION CONFIRMS THAT HIS JURISDICTIONAL  
17 ARGUMENTS ARE PURE SPECULATION**

18      Plaintiff concedes that a stay of discovery is warranted where there is a pending dispositive  
19 motion that may be decided without additional discovery, and a "preliminary peek" at the merits  
20 of the motions suggests plaintiff will be unable to state a claim for relief. *Urban Outfitters, Inc. v.*  
21 *Dermody Operating Co.*, 2021 WL 3605053 (D. Nev. Aug. 13, 2021) (granting stay based on  
22 alleged lack of personal jurisdiction) (*see Opp. at 7*). As the cases cited in plaintiff's opposition  
23 make clear, "a pending motion challenging jurisdiction **strongly favors a stay.**" *AMC*  
24 *Fabrication, Inc. v. KRD Trucking W., Inc.*, 2012 WL 4846152, at \*2 (D. Nev. Oct. 10, 2012)  
25 (granting motion to stay discovery based on alleged lack of personal jurisdiction) (emphasis  
26 added); *see also Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011) (granting  
27 motion to stay discovery pending disposition of motion to dismiss on jurisdictional grounds and  
28 failure to state a claim) (*see Opp. at 8*). Here, Yuga Labs' motion to dismiss established that there

1 is no general jurisdiction over Yuga Labs in Nevada because it is not “essentially at home” in  
 2 Nevada, but instead is a Delaware corporation with no offices, employees, or contractors in  
 3 Nevada. Specific personal jurisdiction is also lacking here. Plaintiff has not – and cannot – meet  
 4 his burden to establish ***both*** (1) that Yuga Labs directed its activities at Nevada and “purposely  
 5 availed itself” of conducting activities in Nevada; ***and*** (2) that plaintiff’s claims arise out of or  
 6 relate to forum-related activities ***by Yuga Labs***. *See Schwarzenegger v. Fred Martin Motor Co.*,  
 7 374 F.3d 797, 802 (9th Cir. 2004). *See* MTD FAC<sup>1</sup> at 6-12; Stay Mot. at 7-9.

8       The opposition to the motion to stay raises only two purported bases for jurisdiction: (1)  
 9 Yuga Labs’ purported interactions with members of the virtual BAYC who happen to reside in  
 10 Nevada; and (2) Yuga Labs’ alleged partnerships with third parties to engage with BAYC club  
 11 members in Nevada. Opp. at 9-11. Both theories fail.

12       With respect to the claim based on purported membership in the BAYC, numerous courts  
 13 around the country have confirmed that there is no jurisdiction over a nationwide club in a  
 14 particular state simply because the club provides services to members there.<sup>2</sup> *See, e.g., Baton v.*  
 15 *Ledger SAS*, 2021 WL 5226315, at \*6 (N.D. Cal. Nov. 9, 2021) (“[A] finding [of] purposeful  
 16 direction cannot ‘be based on the mere fact that [an entity] provides services to customers  
 17 nationwide, including but not limited to [the forum state].’”), *appeal filed*. Ignoring this clear case  
 18 law, plaintiff points to Yuga Labs’ social media communications on Twitter and Discord with  
 19 BAYC club members and the world at large, asserting that these communications constitute  
 20 “substantial contacts” with BAYC community members here. Opp. at 9. But again, cases from  
 21 this district and other jurisdictions universally hold otherwise. Personal jurisdiction is not  
 22 established based on websites that are merely informational or that advertise. *See Software Dev.*  
 23 & *Inv. of Nevada v. Wall*, 2006 WL 8442597, at \*2 (D. Nev. Feb. 13, 2006) (no specific personal  
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25       <sup>1</sup> Defined terms have the same meaning as in Yuga Labs’ motion to stay (“Stay Mot.”).

26       <sup>2</sup> Plaintiff’s sole case, *Ford Motor*, does not hold otherwise. That Court ***did not*** find jurisdiction  
 27 was established because of an “ongoing relationship between Ford and its customers,” but rather,  
 28 because plaintiffs’ claims related to car accidents that occurred in the forum states involving cars  
 sold by Ford, *i.e.*, there was an “activity [or] occurrence involving the defendant that takes place  
 within the State[.]” *See Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017,  
 1019, 1023, 1026-30 (2021).

1 jurisdiction based on “passive websites provid[ing] information and advertising”). Even an  
 2 interactive website or social forum – such as a blog – does not suffice unless it is primarily  
 3 “commercial” in nature (and incidental sales do not count). *Id.* at \*3.

4 Plaintiff’s contention that the “decentralized nature of web3” (Opp. at 9) somehow creates  
 5 a novel legal question is disingenuous and makes no sense: the Internet has been around for  
 6 decades, and courts addressing the question of how to handle jurisdiction when websites are  
 7 available everywhere (including websites that offer, sell, and distribute things, and allow users to  
 8 interact) is nothing new. Web3 is merely a new way for individuals to interact with the internet.  
 9 As the countless cases cited in Yuga Labs’ motion to dismiss demonstrate (*see* MTD FAC at 7-  
 10 12), the virtual club of BAYC NFT holders, and the BAYC website, Twitter, and Discord do not  
 11 create personal jurisdiction over Yuga Labs in every state simply because they are accessible from  
 12 every state.<sup>3</sup> Plaintiff offers nothing persuasive to the contrary.

13 Nor could these deficiencies be cured through plaintiff’s request for “jurisdictional  
 14 discovery” (Opp. at 10) into purported sales or distributions of physical and digital goods by Yuga  
 15 Labs to **other** Nevada residents (not plaintiff, who does not allege that ever having purchased or  
 16 received goods of any kind from Yuga Labs). That discovery is simply irrelevant here, where  
 17 plaintiff’s claims do not arise out of those sales or distributions. *See Schwarzenegger*, 374 F.3d at  
 18 802 (no personal jurisdiction unless plaintiff’s claim “arises out of or relates to the defendant’s  
 19 forum-related activities”).

20 Plaintiff’s “advertising” argument fares no better. Despite two letters and two sworn  
 21 declarations explaining to plaintiff that Yuga Labs had nothing to do with a Las Vegas advertising  
 22 campaign, plaintiff’s opposition doubles down on his unsupported theory that Yuga Labs is  
 23 somehow behind that advertising nonetheless. *See* Opp. at 10. That claim is a red herring. Even  
 24 if Yuga Labs had advertised in Nevada (and, again, ***the uncontroverted facts are that it did not***),  
 25 that still could not create personal jurisdiction in ***this action*** because plaintiff does not bring

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26       <sup>3</sup> Equally absurd is plaintiff’s claim that under Yuga Labs’ theory, the “only place” Yuga Labs  
 27 could ever face a lawsuit is its place of incorporation. Not so. Like every other company, Yuga  
 28 Labs is subject to jurisdiction anywhere it purposefully avails itself of conducting business and  
 where the claim arises out of those business activities. Plaintiff’s claims present no such facts.

1 claims for false advertising, use of someone's name or likeness in advertising, or otherwise  
 2 remotely related to the alleged advertising campaign. *Cf. Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d  
 3 1191, 1195-98 (9th Cir. 1988) (finding purposeful availment where claim was specifically based  
 4 on content of the ads at issue). Again, plaintiff's reliance on *Ford Motor* is misplaced. There, the  
 5 Supreme Court held that where an automobile manufacturer regularly sells cars in a state, it is  
 6 subject to jurisdiction for accidents occurring in that state caused by product defects in the same  
 7 type of car it sells in the state, notwithstanding that the specific cars involved in the accidents were  
 8 originally sold in other states. *See Ford Motor*, 141 S. Ct. at 1029-30. Here, even if Yuga Labs  
 9 regularly sold NFTs in Nevada (which plaintiff does not assert), plaintiff does not bring claims  
 10 based on some inherent defect in NFTs he purchased from a third party (not Yuga Labs) in  
 11 another state. Instead, plaintiff brings negligence and contract claims against Yuga Labs based on  
 12 his interactions on a generally available community Discord channel – activities that have no  
 13 connection to any sales or advertising of any kind, inside or outside Nevada.<sup>4</sup>

### 14 **III. A STAY IS ALSO WARRANTED BECAUSE PLAINTIFF'S OPPOSITION 15 CONFIRMS THAT HE CANNOT STATE A CLAIM FOR RELIEF**

16 A stay of discovery is appropriate where a complaint likely fails to state a viable claim for  
 17 relief. Opp. at 11-12; *see Duffy v. ASNY NY, LLC*, 2022 WL 1785395 (D. Nev. May 31, 2022)  
 18 (granting stay where plaintiff likely failed to state a claim for relief); *Robinson v. Las Vegas*  
 19

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20 <sup>4</sup> Plaintiff asks why Yuga Labs "draw[s] attention" to the fact that plaintiff **now** admits he did not  
 21 reside in Nevada when the FAC was filed. Opp. at 6 n.2. Simple. It appears plaintiff misstated  
 22 this fact to bolster the appearance that Nevada is the right forum for this suit. While it is correct  
 23 that diversity jurisdiction is measured at the time of the initial suit, that alone does not resolve the  
 24 question of whether the Court has subject matter jurisdiction based on complete diversity. It is  
 25 plaintiff's burden to show that he was domiciled in Nevada at the time the complaint was filed,  
 26 not just that he resided there. It is not clear that the Incline Village, Nevada home, which was  
 27 promoted as an Airbnb rental and sold just after this case was filed, was in fact ever plaintiff's  
 28 domicile. And here, where Does are named, the question takes on even more significance in  
 determining subject matter jurisdiction and complete diversity. *See Doe v. Tapang*, 2019 WL  
 3576995, at \*4 (N.D. Cal. Aug. 6, 2019), *aff'd*, 834 F. App'x 399 (9th Cir. 2021). Current  
 residence is also a factor courts consider in deciding appropriate venue. *See, e.g., Worley v.*  
*Montgomery*, 2021 WL 3616710, at \*2 (D. Nev. Aug. 16, 2021) (plaintiff's forum choice carries  
 "little weight" where she does not reside in forum). The cavalier approach to pleading basic  
 jurisdictional facts also calls into question other allegations in the FAC.

1     *Metro. Police Dep’t*, 2021 WL 5173616 (D. Nev. Nov. 4, 2021) (same); *Urban Outfitters*, 2021  
 2     WL 3605053 (same). The purpose of Federal Rule of Civil Procedure 12(b)(6) is to enable  
 3     defendants to challenge the legal sufficiency of a complaint without subjecting themselves to  
 4     discovery. *Tradebay*, 278 F.R.D. at 601 (citing *Rutman Wine Co. v. E. & J. Gallo Winery*, 829  
 5     F.2d 729, 738 (9th Cir. 1987)). “[D]iscovery follows the filing of a well-pleaded complaint. It is  
 6     not a device to enable the plaintiff to make a case when his complaint has failed to state a claim  
 7     for relief.” *Steinmetz v. Experian Info. Solutions, Inc.*, 2019 WL 3082720, at \*1 (D. Nev. July 15,  
 8     2019) (quoting *Mujina v. AirScan Inc.*, 771 F.3d 580, 583 n.7 (9th Cir. 2014)). Here, plaintiff’s  
 9     opposition confirms that the FAC does not state a claim against Yuga Labs.

10           **A.     The FAC Fails To State A Viable Claim For Negligence**

11         Plaintiff acknowledges that, in Nevada, “[w]hether a defendant owes a plaintiff a duty of  
 12     care is a question of law.” Opp. at 12; *Scialabba v. Brandise Constr. Co.*, 921 P.2d 928, 968  
 13     (Nev. 1996); *Beckman v. Match.com, LLC*, 2017 WL 1304288, at \*3 (D. Nev. Mar. 10, 2017),  
 14     aff’d, 743 F. App’x 142 (9th Cir. 2018). Yet, he takes the irreconcilable position that determining  
 15     whether a special relationship exists, which goes hand in hand with whether a duty exists, “is a  
 16     factually intensive inquiry” that requires further discovery. *See* Opp. at 12. In doing so, plaintiff  
 17     misrepresents the facts and contradicts the very law that he cites. *See id.; Beckman*, 2017 WL  
 18     1304288, at \*4 (dismissing negligence claim at motion to dismiss stage because no special  
 19     relationship existed between plaintiff and Match.com as a matter of law).<sup>5</sup> A complaint only  
 20     survives a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) where plaintiff  
 21     meets the ***pleading*** standard of alleging facts sufficient to “plausibly suggest an entitlement to  
 22     relief.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Contrary to plaintiff’s claim, Yuga  
 23     Labs’ Rule 12(b)(6) motion to dismiss did not raise “factual disagreements between the parties”  
 24     (Opp. at 13) because Yuga Labs was forced to accept the allegations in the FAC as true. Instead,  
 25     the motion to dismiss contended that no special relationship exists as a matter of law based on the

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<sup>5</sup> Plaintiff inexplicably relies on *Brennan v. Cadwell Sanford Deibert & Garry LLP*, 2020 WL  
 27     5653673 (D. Nev. Sept. 22, 2020), but the motion to stay discovery there **was granted** because the  
 28     issues were “matters of law that the Court can decide without discovery.” *Id.* at \*2. The same is  
                 true here as to jurisdiction and plaintiff’s inability to state a viable claim under Rule 12(b)(6).

1 facts as alleged in the FAC. A preliminary peek at the merits of this question makes clear that  
2 plaintiff pleads no facts even remotely supporting a special relationship.

3 Plaintiff concedes that the threshold legal question of a special relationship is satisfied  
4 only where “the ability of one of the parties to provide for his own protection has been limited in  
5 some way by his submission to the control of another.” *Beckman*, 2017 WL 1304288, at \*3.  
6 Despite acknowledging this principle, plaintiff fails to identify *any* allegations in the FAC that  
7 indicate that his “ability” to provide for his own “protection” was “limited” by Yuga Labs’  
8 actions. Instead, plaintiff makes the unremarkable point that the FAC alleges that Yuga Labs  
9 controls the gatekeeping function for BAYC club membership and the distribution of benefits to  
10 club members. Opp. at 13. Putting aside that that is purely a function of who holds an NFT  
11 according to the blockchain, what plaintiff never explains is how this purported control by Yuga  
12 Labs over the BAYC somehow *limited plaintiff’s ability to decide not to open his wallet to a*  
13 *thief*. Reading through the opposition, this Court would not know that a third-party criminal stole  
14 plaintiff’s NFTs from plaintiff’s personal digital wallet after he *voluntarily* interacted with an  
15 unknown individual, on a Discord server unrelated to Yuga Labs or the BAYC, and then clicked  
16 on a link provided by the bad actor (which he did not verify), and thereby provided access to his  
17 digital wallet. Plaintiff does not allege that Yuga Labs had any control whatsoever over that chain  
18 of events, nor could he – plaintiff admits that he acted freely of his own accord. If anything, a  
19 preliminary peek at the merits demonstrates that, just as in *Beckman*, plaintiff fails to plead a  
20 special relationship and, given the lack of a cognizable duty, his negligence claim fails. The  
21 claim also fails for the independent reasons that causation is not plausibly alleged and the claim is  
22 barred by the economic loss doctrine – defects the opposition does not even attempt to address.

23       **B. Plaintiff’s Breach Of Contract Claim Also Fails As A Matter Of Law**

24 Yuga Labs’ challenge to the legal sufficiency of plaintiff’s breach of contract claim is also  
25 likely to prevail. The FAC fails to adequately allege that (a) Yuga Labs made a contractual offer,  
26 or (b) the parties formed a contract that includes “lifetime membership” in the BAYC or  
27 “membership benefits to ‘rightful’ owners of a Bored Ape or Mutant Ape NFT irrespective of  
28 whether they hold an NFT according to the blockchain.” MTD FAC at 20-23 (noting the absence

1 of any factual allegations stating that BAYC membership benefits are available to individuals  
2 who do not hold a Bored Ape NFT according to the blockchain and discussing the BAYC terms  
3 and conditions that provide the opposite).

4       Attempting to sidestep Yuga Lab's *actual* challenges to the contract claim, plaintiff  
5 focuses exclusively on whether Yuga Labs' online statements constitute ““offers’ in the  
6 contractual sense.” Opp. at 13. Specifically, plaintiff argues that, because the question of  
7 whether Yuga Labs made “an operative offer”“depends upon all the surrounding circumstances,”  
8 the parties’ factual disagreements regarding contract formation prevent Yuga Labs from  
9 prevailing on its motion to dismiss. Opp. at 13-14 (quoting *Sateriale v. R.J. Reynolds Tobacco*  
10 Co., 697 F.3d 777, 784 (9th Cir. 2012)). Again, plaintiff misunderstands 12(b)(6) motions.  
11 Plaintiff’s FAC offers vague and conclusory assertions on contract formation that are insufficient  
12 as a matter of law. He claims that “BAYC made this offer on [BAYC’s] “official Twitter  
13 account,” which is allegedly “explained in further detail on BAYC’s official website.” See FAC  
14 ¶¶ 170-181 (allegations regarding the first claim for relief – breach of contract). Yuga Labs’  
15 motion to dismiss challenges the legal sufficiency of these threadbare allegations. In particular,  
16 the motion to dismiss argues that plaintiff’s complaint identifies statements that are, at most,  
17 advertisements, and as a matter of law “[a]dvvertisements count as offers only where they ‘invite  
18 the performance of a specific act without further communication and **leave nothing for**  
19 **negotiation.**’” MTD FAC at 20 (quoting *Sateriale*, 697 F.3d at 788 (emphasis added)). As the  
20 motion to dismiss explains, according to plaintiff’s own allegations, which must be accepted as  
21 true at this stage of the litigation, the purported “offer” said nothing about what membership  
22 entails or the supposed term that plaintiff claims Yuga Labs allegedly breached – that  
23 membership belongs to those making claims of “rightful” ownership of a qualifying NFT and not  
24 according to the blockchain. *Id.* at 20-21; *see also* Stay Mot. at 11. As a result, plaintiff fails to  
25 plead the necessary element of an offer.

26       Indeed, plaintiff completely misreads the rule in *Sateriale* regarding whether a  
27 communication constitutes an operative contractual offer, asserting that “[l]ooking into the  
28 ‘surrounding circumstances’ is another way of saying that this Court must make an inquiry into

1 the facts of the case.” Opp. at 13. And on this basis, plaintiff asserts that there is a “factual  
 2 dispute in need of further immediate exploration” that precludes granting Yuga Labs’ motion to  
 3 dismiss. Opp. at 14 (citing *Brennan*, 2020 WL 5653673 at \*2). *Sateriale* held no such thing. In  
 4 that case, the district court dismissed the plaintiff’s contract claim under Rule 12(b)(6). 697 F.3d  
 5 at 784. While the appellate court reversed the dismissal, that decision had nothing to do with the  
 6 parties’ opposing positions regarding contract formation (*i.e.*, whether or not defendant’s  
 7 statements constituted an “offer”) or suggesting that a factual inquiry into the “surrounding  
 8 circumstances” was necessary to decide the issue as a matter of law under Rule 12(b)(6). *Id.* at  
 9 784-92. Instead, the appellate court found that *as a matter of pleading*, the allegations had been  
 10 sufficient “in light of the totality of the circumstances surrounding RJR’s communications to  
 11 consumers.” *Id.* at 787-88 (finding that the alleged offer “invited the performance of specific acts  
 12 . . . without further communication, and leaving nothing for negotiation.”). That does nothing to  
 13 undermine the fact that the operative pleading *here* is and remains facially deficient.

#### 14       C.     Plaintiff’s Alternative Implied Covenant Claim Is Equally Defective

15       Just as with the breach of contract claim, plaintiff mischaracterizes Yuga Labs’ challenge  
 16 to the implied covenant claim and misunderstands the Court’s analysis on a 12(b)(6) motion. Yet  
 17 again, plaintiff incorrectly asserts that there “is a factual dispute in need of further immediate  
 18 exploration” that prevents granting the motion to dismiss. Opp. at 14 (citing *Brennan*).

19       Consistent with the law, Yuga Labs’ position is that an implied covenant claim is  
 20 “available only where there is literal compliance with a contract but conduct that otherwise  
 21 ‘deliberately [contravenes] the intention and spirit of the contract.’” Stay Mot. at 11 (citing  
 22 *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 808 P.2d 919, 922-23 (Nev. 1991)); *see also*  
 23 MTD FAC at 23-24 (citing multiple cases following this general rule and dismissing implied  
 24 covenant claims). Here, where plaintiff has not sufficiently alleged that a contract was formed,  
 25 the implied covenant does not apply. But even if plaintiff had effectively done so, he has not  
 26 alleged (as he must) Yuga Labs’ compliance with the terms of that agreement, or any conduct by  
 27 Yuga Labs undermining the intention and spirit of any such contract. If anything, Yuga Labs has  
 28 done precisely what the terms and conditions attached to Bored Ape NFTs said it would do –

1 “rely on the blockchain to determine ownership and rely on NFT holders to safeguard  
 2 themselves.” MTD FAC at 23 (noting plaintiff’s repeated admissions regarding the applicability  
 3 of such terms). Instead, plaintiff attempts to repackage his breach of contract claim as a breach of  
 4 the implied covenant claim without pleading the required elements as a matter of law. *See Opp.*  
 5 at 14 (asserting that plaintiff entered into a contract for membership benefits and whether Yuga  
 6 Labs breached the implied covenant is a factual dispute). That plaintiff did not meet his pleading  
 7 burden is not reasonably subject to dispute, however. Dismissal of this claim is also appropriate.

#### 8 IV. THE COMPETING INTERESTS OVERWHELMINGLY FAVOR A STAY

9       Although plaintiff agrees that Nevada courts may balance “the competing interests of the  
 10 parties” when determining whether a stay is appropriate, he cites the wrong standard for weighing  
 11 those interests. *See Opp.* at 14-15.<sup>6</sup> The correct standard considers, among other things, “the  
 12 hardship or inequity which a party may suffer in being required to go forward, and the orderly  
 13 course of justice measured in terms of the simplifying or complicating of issues, proof, and  
 14 questions of law which could be expected to result from a stay.” *Puckett v. Schnog*, 2013 WL  
 15 1874754, at \*3 (D. Nev. May 3, 2013) (quoting *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110  
 16 (9th Cir. 2005)) (competing interests favor a stay where defendant’s motion was likely to be case  
 17 dispositive).

18       Here, these factors weigh heavily in favor of granting a stay. Indeed, there is no greater  
 19 inequity than forcing a party to participate in discovery as to defective claims, and that is all the  
 20 worse where jurisdiction is also lacking. *See, e.g., Duffy*, 2022 WL 1785395, at \*3 (even without  
 21 jurisdictional issues, finding time and money spent on discovery on defective claims results in  
 22 prejudice). There is also no question that the orderly course of justice, and ample case law in this  
 23 jurisdiction, provides that a stay is appropriate where there is a pending meritorious motion to  
 24 dismiss for lack of personal jurisdiction or failure to state a claim. *See Section II supra* (citing

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25  
 26       <sup>6</sup> Plaintiff improperly grafts the heightened standard for seeking a protective order under Fed. R.  
 27 Civ. P. 26(c), as articulated in *Tradebay*, onto the competing interests analysis: “A showing that  
 28 discovery may involve some inconvenience and expense does not suffice to establish good cause  
 for issuance of a protective order. … Rather, a party seeking a protective order must show a  
 particular and specific need for the protective order.” 278 F.R.D. at 601 (emphasis added). It  
 does not apply here where the argument is that all discovery is premature.

1 cases). Here, ***both grounds are established.*** A discovery stay until the motions to dismiss are  
 2 resolved also makes sense, as those rulings serve to simplify the “issues, proof, and questions of  
 3 law.” *Puckett*, 2013 WL 1874754, at \*3. These principles are also reflected in Judge Du’s  
 4 standing order, which aims to avoid “unnecessary discovery.” Standing Order at 1. For all these  
 5 reasons, a stay is appropriate and this Court should grant Yuga Labs’ request.

6 Plaintiff’s arguments to the contrary are unavailing. *First*, Plaintiff relies on Federal Rule  
 7 of Civil Procedure 1 to argue that he is entitled “to a just and speedy determination of his action.”  
 8 Opp. at 15. But Rule 1 cuts both ways. Forcing Yuga Labs to engage in expensive and  
 9 burdensome discovery before this Court has determined if it even has jurisdiction over Yuga  
 10 Labs, or whether plaintiff’s claims have any merit, also runs afoul of Rule 1’s mandates. *See*  
 11 *Duffy*, 2022 WL 1785395, at \*3 (noting a discovery stay “accomplish[es] the objectives of Rule 1,  
 12 especially considering that Plaintiffs must satisfy Rule 8’s pleading requirement before engaging  
 13 in discovery”). *Second*, plaintiff argues that a delay in discovery will cause him “to continue to  
 14 lose out on the benefits conferred on BAYC members” (Opp. at 15), but plaintiff’s loss of access  
 15 to the BAYC (and any alleged benefits from any source that may accrue to NFT holders) is the  
 16 result of plaintiff’s own carelessness and the bad acts of a third party, not this Court’s procedural  
 17 decisions. Moreover, commencing discovery will not (and frankly cannot, absent the return of his  
 18 NFTs, which ***Yuga Labs*** does not have) result in any benefits, nor has plaintiff sought any  
 19 immediate relief from this Court. *See Duffy*, 2022 WL 1785395, at \*3 (“[I]f discovery is stayed  
 20 and the Court later denies Defendant’s motion to dismiss, Plaintiffs may only suffer a delay in  
 21 receiving answers to their discovery requests.”). *Third*, plaintiff contends that there is a “risk of  
 22 losing important evidence” if discovery is not allowed to proceed at this time. But there is  
 23 nothing to support that contention<sup>7</sup> (Yuga Labs is well aware of its preservation obligations) and  
 24 Nevada courts have rejected similar arguments before. *See Puckett*, 2013 WL 1874754, at \*3  
 25 (rejecting plaintiff’s argument that defendant “will hide valuable assets”).

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26           <sup>7</sup> Indeed, nothing prevented plaintiff from day one from collecting evidence from online platforms  
 27 that he has identified as possessing supporting evidence, nor did plaintiff serve any third-party  
 28 subpoenas at the first opportunity. If plaintiff is truly concerned about the loss of evidence caused  
                  by a modest delay, he could send preservation notices to third party witnesses to address the issue.

## V. CONCLUSION

The only thing that plaintiff’s opposition confirms is that a stay of discovery is warranted here because Yuga Labs has raised compelling, dispositive jurisdictional and substantive challenges to plaintiff’s claims, to which plaintiff has no answer. Yuga Labs respectfully requests that the Court stay discovery, including the deadlines triggered by Rule 26(f) and LR 26-1, and vacate the Rule 26(f) report, Scheduling Order, and Order to File Case Management Report (and attendant discovery-related obligations) entered July 21, 2022 as premature, and adjourn further case scheduling until such time as the pending motions to dismiss have been decided.

Dated: September 2, 2022

FENWICK & WEST LLP

By: /s/ Jennifer C. Bretan  
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**CERTIFICATE OF SERVICE**

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on September 2, 2022, a true and correct copy of **YUGA LABS' REPLY IN SUPPORT OF MOTION TO STAY** was transmitted electronically through the Court's CM/ECF e-filing electronic notice system to all attorneys associated with the above-captioned case.

/s/ Jennifer C. Bretan

Jennifer C. Bretan

Fenwick & West LLP